

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

---

JANET F.,  
*Appellant,*

*v.*

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, M.S. AND S.F.,  
*Appellees.*

No. 2 CA-JV 2013-0086  
Filed February 18, 2014

---

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See* Ariz. R. Sup. Ct. 111(c); Ariz. R. Civ. App. P. 28(c).

---

Appeal from the Superior Court in Pima County

No. JD19549800

The Honorable Karen Adam, Judge

AFFIRMED

---

COUNSEL

Karp & Weiss, P.C., Tucson  
By Patrick P. Lacroix  
*Counsel for Appellant*

JANET F. v. ARIZ. DEP'T OF ECON. SEC.  
Decision of the Court

Thomas C. Horne, Arizona Attorney General  
By Erika Z. Alfred, Assistant Attorney General, Tucson  
*Counsel for Appellee Arizona Department of Economic Security*

The Hopkins Law Office, P.C., Tucson  
By Cedric Martin Hopkins  
*Counsel for Appellees M.S. and S.F.*

---

**MEMORANDUM DECISION**

Chief Judge Howard authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

---

H O W A R D, Chief Judge:

¶1 Appellant Janet F., maternal grandmother and guardian of dependent children, M.S., born in March 2000, and S.F., born in July 2006, appeals the juvenile court's order revoking her permanent<sup>1</sup> guardianships of the children, and asks that we vacate that order and remand for a trial. For the reasons set forth below, we conclude the court did not abuse its discretion by dismissing the guardianships. See *In re Maricopa Cnty., Juv. Action No. JD-6236*, 178 Ariz. 449, 451, 874 P.2d 1006, 1008 (App. 1994) (appellate court reviews for abuse of discretion juvenile court's placement decision involving best interest of dependent juvenile). An abuse of discretion includes an error of law, see *In re Nickolas T.*, 223 Ariz. 403, ¶ 4, 224 P.3d 219, 220 (App. 2010), and "we review de novo any issues of law, including the interpretation of a statute." *Kenneth B. v. Tina B.*, 226 Ariz. 33, ¶ 12, 243 P.3d 636, 639 (App. 2010).

¶2 The children, who moved from West Virginia to Arizona in approximately 2009, were removed from Janet's care in

---

<sup>1</sup> Although it is not clear from the record whether the guardianships were permanent, it appears they were.

JANET F. v. ARIZ. DEP'T OF ECON. SEC.  
Decision of the Court

August 2010 based on allegations of neglect. At the time of their removal, the children were being cared for by Janet under guardianships established in West Virginia in 2005 and 2008. In August 2010, the Arizona Department of Economic Security (ADES) filed a dependency petition as to the parents and Janet. Except for M.S.'s father, the parents<sup>2</sup> and Janet pled no contest to or admitted the allegations in the petition,<sup>3</sup> and the children were adjudicated dependent based on abuse and neglect.

¶3 In April 2012, ADES moved to revoke Janet's guardianships pursuant to A.R.S. § 8-873 on the basis of neglect, Janet's convictions for contributing to the delinquency of a minor, and her failure to benefit from services provided by ADES. See A.R.S. § 8-873(C) (revocation appropriate if juvenile court finds by clear and convincing evidence significant change in circumstances exists and revocation is in child's best interest). In June 2012, the juvenile court conducted a brief, seven-minute hearing on ADES's petition to revoke. Janet appeared telephonically at that hearing, and her attorney stated Janet had "no objection to the revocation of the guardianship." The court ordered ADES to provide necessary services "to allow the minor[s], the placement,<sup>4</sup> and [Janet] to transition into the new relationship [dismissal of the guardianships]," and then took the matter of its jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act

---

<sup>2</sup>The parental rights of all of the parents were terminated in 2012. They are not parties to this appeal.

<sup>3</sup>The allegations related to Janet included reports that S.F. "was found unsupervised, wandering in the street in the middle of the night"; Janet had failed to benefit from provided services; Janet had not properly managed M.S.'s diabetes, placing her at serious risk of harm, and had resisted further education regarding M.S.'s medical needs; and, M.S. had not attended school for two years.

<sup>4</sup> The children have been in their prospective adoptive placement since 2012. On October 3, 2013, this court granted Janet's motion to stay their adoption proceedings pending disposition of this appeal.

JANET F. v. ARIZ. DEP'T OF ECON. SEC.  
Decision of the Court

(UCCJEA) <sup>5</sup> under advisement. During the course of the dependency, Child Protective Services (CPS) provided Janet with various services, including a psychological evaluation, diabetes education and parenting classes, supervised visitation, individual therapy, case management, and parent aide services.

¶4 Based on the juvenile court's difficulty reaching the West Virginia judge to clarify the status of the guardianships, in December 2012 ADES filed a motion requesting a hearing on the Arizona court's jurisdiction to dismiss the guardianships under the UCCJEA. In its minute entry ruling following that hearing, which Janet attended, the court noted Janet "is not willing to revoke the guardianship[s] established by the court in West Virginia," and stated it would "contact the judge in West Virginia ex parte to determine jurisdiction." In April 2013, ADES filed a second petition to revoke the guardianships, essentially asserting the same grounds it had asserted in the first petition, but also contending Arizona had jurisdiction to revoke the guardianships under the UCCJEA, and alternatively requesting the court ask West Virginia to agree it no longer had continuing and exclusive jurisdiction, or that Arizona was a more convenient forum. See A.R.S. § 25-1033 (Arizona court shall not modify custody determination made by court of another state unless Arizona court has jurisdiction to make initial custody determination and court of other state determines either "it no longer has exclusive, continuing jurisdiction . . . or that a court of this state would be a more convenient forum," or one of the courts determines "the child, the child's parents and any person acting as a parent do not presently reside in the other state").

¶5 In May 2013, the juvenile court issued an order finding that it had assumed emergency jurisdiction over the children when

---

<sup>5</sup>"The UCCJEA is a uniform statute that has been adopted by forty-five states,[] including Arizona [and West Virginia], to create consistency in interstate child custody and enforcement proceedings." See *Melgar v. Campo*, 215 Ariz. 605, ¶ 7, 161 P.3d 1269, 1270 (App. 2007); see also A.R.S. §§ 25-1001 through 25-1067, and W. Va. Code §§ 48-20-101 through 48-20-404.

JANET F. v. ARIZ. DEP'T OF ECON. SEC.  
Decision of the Court

it had removed them from Janet's care in August 2010, that Janet "refuses to revoke the guardianships and objects to Arizona assuming jurisdiction over them" and that, at the request of the West Virginia judge, the court had formally requested West Virginia relinquish jurisdiction over the guardianships to allow Arizona to consolidate them with the ongoing dependency and terminate the guardianships, thereby freeing the children for adoption. *See* A.R.S. § 25-1034(A) (Arizona court has temporary emergency jurisdiction if child in Arizona requires emergency protection because he may be subjected to or threatened with mistreatment or abuse).

¶6 At a dependency review hearing in July 2013, the juvenile court again noted Janet's objection to the dismissal of the guardianships and to Arizona's jurisdiction. The court also admitted a June 2013 addendum report, which tracked the "amazing" progress of S.F., who had been diagnosed with autism, as well as M.S.'s struggles to manage her diabetes, and the placement's efforts to help both children cope with these challenges.<sup>6</sup> The author of the report noted the children "need to be able to feel secure that they will not have to leave their home and family," and "recommended that the guardianship of [Janet] be dissolved [to] allow the children to be adopted." On July 18, 2013, the court received two orders from the West Virginia court relinquishing its jurisdiction of the guardianships and transferring the matter to Arizona. Without any further hearing, the court issued a summary order dismissing Janet's guardianships and ordered the children to remain in their current adoptive placement. In that order, the court also stated,

---

<sup>6</sup>The juvenile court also admitted similar reports at other dependency review hearings that occurred between September 2012 and March 2013. Those reports documented various facts, including that the children "have blossomed and act more like children" in their placement; they "are adoptable children"; and, Janet had exhibited inappropriate conduct during her visits with the children, and was no longer able to care for them.

JANET F. v. ARIZ. DEP'T OF ECON. SEC.  
Decision of the Court

The motion to revoke the West Virginia guardianships was originally addressed in this Court on June 11, 2012 . . . All parties had the opportunity to address the revocation at that and subsequent hearings. The Court deferred ruling until the West Virginia Court made a decision about whether or not to relinquish jurisdiction. All parties were afforded the opportunity to address the issue of whether jurisdiction should be relinquished. The Court finds, therefore, that it has jurisdiction over all aspects of this case, including over the pending West Virginia guardianships as noted above.

¶7 Janet then filed this appeal. In the absence of any language establishing whether the juvenile court had considered A.R.S. § 8-873<sup>7</sup> and whether ADES had proved pursuant to subsection (C) of that statute “‘a change of circumstances by clear and convincing evidence’ and if revocation of the guardianships is in the children’s best interest,” we suspended the appeal and remanded to the court for clarification.

¶8 In its amended order filed January 27, 2014, the juvenile court made extensive findings of fact, including that Janet was not addressing the physical and emotional needs of the children; CPS had provided numerous services both before and after the children

---

<sup>7</sup>ADES maintains for the first time on appeal that this matter falls under the probate, rather than the juvenile code, contrary to its exclusive reliance on the juvenile code in both of its petitions to revoke the guardianships below. See A.R.S. §§ 14-5212, 8-873. We note that ADES is estopped from asserting this inconsistent position on appeal. See *Hrudka v. Hrudka*, 186 Ariz. 84, 92, 919 P.2d 179, 187 (App. 1995) (party who successfully asserts particular position in one judicial proceeding not allowed to assert inconsistent position in subsequent proceeding).

JANET F. v. ARIZ. DEP'T OF ECON. SEC.  
Decision of the Court

were removed from her care; and, Janet did not benefit from the offered services. The court found that, since the children had been removed from Janet's care, M.S.'s "diabetes is completely under control, the children have made tremendous strides in school, and they are secure and happy with their potential adoptive parents," and added that S.F.'s "behavior has improved greatly because of the placement's skill and expertise in dealing with his autism." The court dismissed the guardianships and Janet from the case, and concluded:

1. The state has proven by clear and convincing evidence that there has been a significant change of circumstances and that the children's guardian is unable to properly care for them. A.R.S. § 8-873(A)(2). The children were at serious risk to their health and safety when CPS took custody and offered services. [M.S.'s] diabetes was out-of-control and the guardian was unable to manage [S.F.'s] autistic behaviors. A full array of services was offered to the guardian to help her learn to parent the children safely and appropriately. After two years, the guardian had not benefitted from those services, continued to place the children at risk, and was unwilling to recognize their needs and her shortcomings. A.R.S. § 8-873(C).

2. The state has proven by clear and convincing evidence that revocation of the guardianship is in the children's best interest. The children cannot be returned to [Janet]. They have a permanent home waiting for them, willing to adopt. This family has worked tirelessly to improve the lives of these children. The guardian has resisted their efforts and has attempted to

JANET F. v. ARIZ. DEP'T OF ECON. SEC.  
Decision of the Court

hinder and impede the relationship  
between the children and the placement.  
A.R.S. § 8-873(C).

¶9 On appeal, Janet argues her failure to object to the revocation of the guardianships at the June 2012 hearing, held before the jurisdiction issue had been resolved formally<sup>8</sup> and before ADES had filed its second petition to revoke, was not a knowing, voluntary or intelligent waiver of that right. Significantly, it does not appear the juvenile court relied on Janet's failure to object to termination of the guardianships at the June 2012 hearing when it ruled in July 2013. To the contrary, as previously mentioned, the court noted on at least two occasions that Janet had voiced ongoing objections to revoking the guardianships since the June 2012 hearing, a position ADES also acknowledged in its second petition to revoke. Accordingly, although the court mentioned the June 2012 hearing in its July 2013 ruling dismissing the guardianships, it did not expressly state it had considered Janet's prior consent to the dismissal in rendering its decision, nor would the record suggest it had.

¶10 Additionally, Janet maintains she stands in the position of a parent, and suggests the juvenile court's failure to determine whether her waiver was knowing, voluntary and intelligent violated her constitutional rights. However, because the record does not establish the court relied on her waiver in the first instance, we decline to address Janet's claim that she was entitled to the same rights as a parent. *See Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 556, 944 P.2d 68, 71 (App. 1997) (commenting on the "'hybrid'" nature of statutory permanent guardianship, which provides the guardian with most of "'the powers and responsibilities of a parent'" while nonetheless maintaining court supervision over the

---

<sup>8</sup>Because it is undisputed the juvenile court in Arizona had jurisdiction to adjudicate the children dependent, and in light of West Virginia's subsequent relinquishment of jurisdiction over the guardianships, any remaining issue regarding jurisdiction has been rendered moot.



JANET F. v. ARIZ. DEP'T OF ECON. SEC.  
Decision of the Court

ward, rendering a guardianship “neither fish nor fowl”) (citations omitted), *quoting* § 14-5209.

¶11 Janet also asserts her repeated objections to the dismissal of the guardianships, made after the June 2012 hearing and again after ADES had filed the second petition to revoke, entitled her to a trial, or at the very least, to a second initial hearing at which ADES should have been required to prove by clear and convincing evidence that a change of circumstances and the best interest of the children justified revocation under § 8-873. Notably, Janet has failed to cite any authority entitling her to a further hearing. Moreover, the juvenile court referred to the “new relationship” (dismissal of the guardianships) at the June 2012 hearing, and again in May 2013, just a few months before it dismissed the guardianships, the court reiterated it was asking the West Virginia court to relinquish jurisdiction so the guardianships could be “consolidated with the ongoing [Arizona] dependency case . . . , the guardianships terminated, and the children freed for adoption.” Based on this record, Janet cannot reasonably claim she did not understand what the court contemplated doing, despite her failure to ask for an additional hearing before the court ruled in July 2013. Nor has she argued she could have produced additional information not already before the court which would have impacted its decision.

¶12 For the foregoing reasons, we affirm the juvenile court’s order revoking Janet’s guardianships of M.S. and S.F.<sup>9</sup>

---

<sup>9</sup>In a separate answering brief, the children “strenuously oppose” Janet’s position, and note they “wish to have nothing to do with her.” In light of our decision, however, we decline to address the children’s argument, specifically, that on “October 29, 2013 . . . the West Virginia court terminated and dismissed the guardianship proceedings for both children. Therefore, no guardianship exists in Arizona or West Virginia.” The children have not included a copy of that ruling, which notably appears to be dated after the notice of appeal was filed. In any event, it is not part of the record on appeal. *Cf. Lewis v. Oliver*, 178 Ariz. 330, 338, 873 P.2d 668, 676 (App. 1993) (court considers only record on appeal).